UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:18-cv-00314-FDW

JENNIFER A. JASMAINE f/k/a DUANE L. FOX,)
Plaintiff,)
VS.)) ORDER
NORTH CAROLINA PRISON LEGAL SERVICES,)))
Defendant.))

THIS MATTER is before the Court on the Plaintiff's "Motion to Dismiss Pursuant to FRAP 42(b)." [Doc. 26].

On its original initial review of Plaintiff's Complaint brought under 42 U.S.C. § 1983, this Court dismissed Plaintiff's Complaint for failure to state a claim. [Doc. 5]. The Plaintiff appealed that dismissal. [Doc. 8]. The Fourth Circuit Court of Appeals vacated the dismissal, holding that the "District Court did not adequately justify its dismissal." [Doc. 15]. On remand, this Court ordered that Plaintiff's Complaint survived initial review and ordered the Defendant to answer or otherwise respond to Plaintiff's Complaint.

On March 5, 2019, Defendant moved to dismiss Plaintiff's Complaint for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. [Doc. 23]. On March 21, 2019, the Court issued an Order advising Plaintiff of her right to respond to the motion to dismiss within fourteen (14) days of that Order. [Doc. 24]. Plaintiff did not respond.

In the current motion, Plaintiff "moves to voluntarily dismiss this proceeding pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure [FRAP]." [Doc. 26]. Plaintiff further states

that she "understands that this proceeding will be dismissed and cannot be reinstated at a later

date." [Id.]. Under Rule 42(b) of the FRAP, before an appeal has been docketed, the district court

may dismiss an appeal on the appellant's motion with notice to all parties. Fed. R. App. P. 42(b).

Because Plaintiff appealed the Court's original Order dismissing Plaintiff's Complaint and

because Plaintiff cites the Federal Rule of Appellate Procedure on dismissal, rather than the

applicable Rule of Civil Procedure, the Court seeks clarification from the Plaintiff before the Court

will rule on Plaintiff's Motion.

If Plaintiff intends to dismiss the above-captioned case with this Court, the Plaintiff should

resubmit her Motion to Dismiss and the motion should be made pursuant to Federal Rule of Civil

Procedure 41(a)(2). If the Plaintiff does not intend to dismiss the above-captioned case, then

Plaintiff shall file a notice withdrawing her Motion to Dismiss [Doc. 26].

IT IS THEREFORE ORDERED that:

Plaintiff shall either file a motion to dismiss in accordance with the terms of this

Order or Plaintiff shall file a notice of withdrawal with the Court withdrawing her

Motion to Dismiss [Doc. 26].

IT IS SO ORDERED.

Signed: June 11, 2019

Frank D. Whitney

Chief United States District Judge

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